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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,335	10/31/2003	Anthony J. Cafferata	J-3763	5399
28165	7590	04/04/2006	EXAMINER	
S.C. JOHNSON & SON, INC. 1525 HOWE STREET RACINE, WI 53403-2236			FIDEI, DAVID	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 04/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/699,335

Applicant(s)

CAFFERATA ET AL.

Examiner

David T. Fidei

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/17/06.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. With regard to the IDS disclosure statement the correction citation of D447,939 to Neall W. Humphrey is noted. This information has been considered.

### ***Claim Rejections - 35 USC § 112***

2. Claims 13 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite or failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 13 and 14 recites the limitation "the greatest depth. There is insufficient antecedent basis for this limitation in the claim. Also, said depth following "the greatest depth" has double antecedent basis.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Perkins (Patent no. 4,781,289). As to claims 13 and 14 a package for containing and displaying at is disclosed comprising a back panel (12), and a front panel (18) attached to said back panel, wherein said front panel comprises a blister pack formed of plastic and including a first outward projecting portion (22) in a bottom portion of said blister pack and at least one additional outward projecting portion (20) having a depth and shape conforming to at least a portion of said at least one article, wherein at least a portion said first outward projecting portion extends widthwise at least a substantial portion between a first side of said blister pack and a second side

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of said blister pack, and has a depth outward sufficient to allow said package to stand substantially upright. As described in col. 3, lines 7-9, the depth of the at least one additional (20) projection is equal in depth to the greatest depth of the first portion (22).

***Claim Rejections - 35 USC § 102***

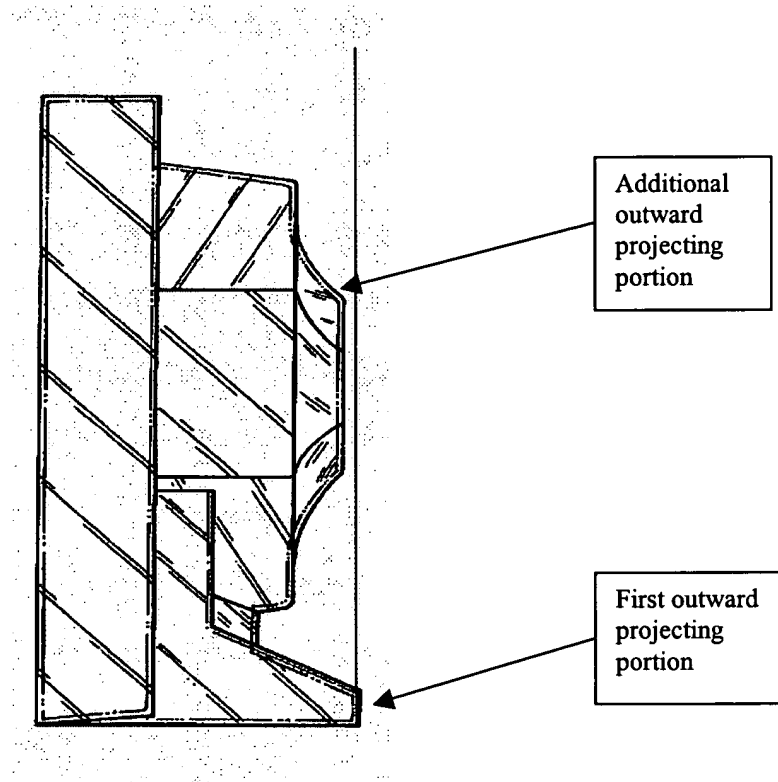
5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Humphrey (Patent no. D447,408). As to claims 1 and 2 a package for containing and displaying at is disclosed comprising a back panel, and a front panel attached to said back panel, wherein said front panel comprises a blister pack formed of plastic and including a first outward projecting portion in a bottom portion of said blister pack and at least one additional outward projecting portion having a depth and shape conforming to at least a portion of said at least one article, wherein at least a portion said first outward projecting portion extends widthwise at least a substantial portion between a first side of said blister pack and a second side of said blister pack, and has a depth outward sufficient to allow said package to stand substantially upright. As shown by the figure below the depth of said at least a portion of said first outward projecting portion is equal to or greater than an outermost projecting portion of the depth of said at least one additional outward projecting portion



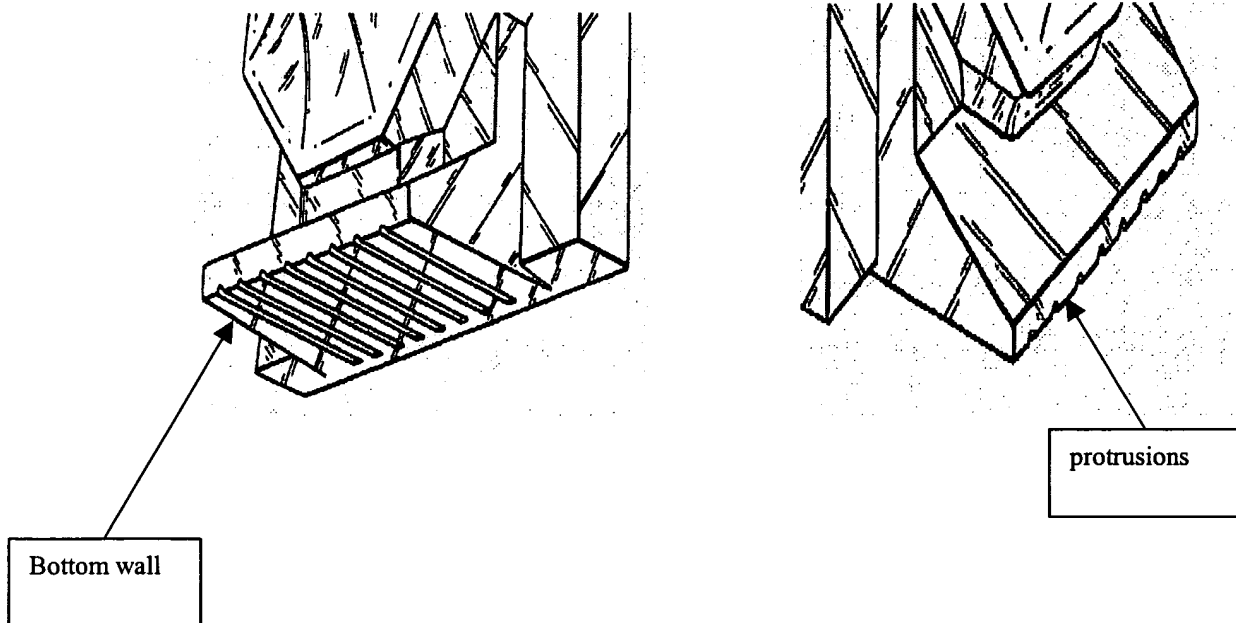
As to claim 3, a package is shown above according to claim 1 wherein said at least one additional outward projecting portion is continuous with said first outward projecting portion.

As to claim 4, a blister pack according to claim 2 is shown wherein said at least one additional outward projecting portion is continuous with said first outward projecting portion.

As to claim 5, a package according to claim 1 wherein said first outward projecting portion includes a bottom wall having integral therein at least two spaced apart

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downward protrusions, see the figure below



As to claim 6, a blister pack is shown according to claim 2 wherein said first outward projecting portion includes a bottom wall having integral therein at least two spaced apart downward protrusions. As shown above there are a plurality of protrusions in as much as is claimed.

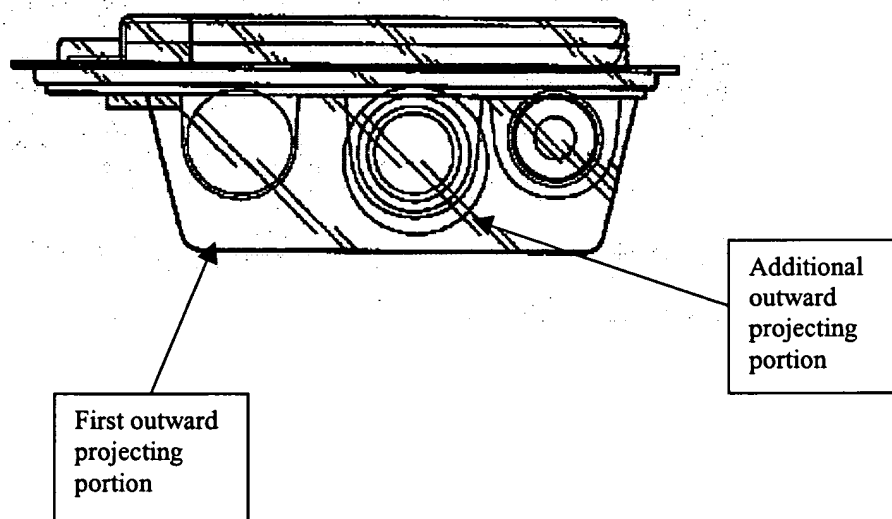
As to claims 7 and 8, a package according to claims 1 and 2 is shown where the first outward projecting portion includes a front wall of uniform depth.

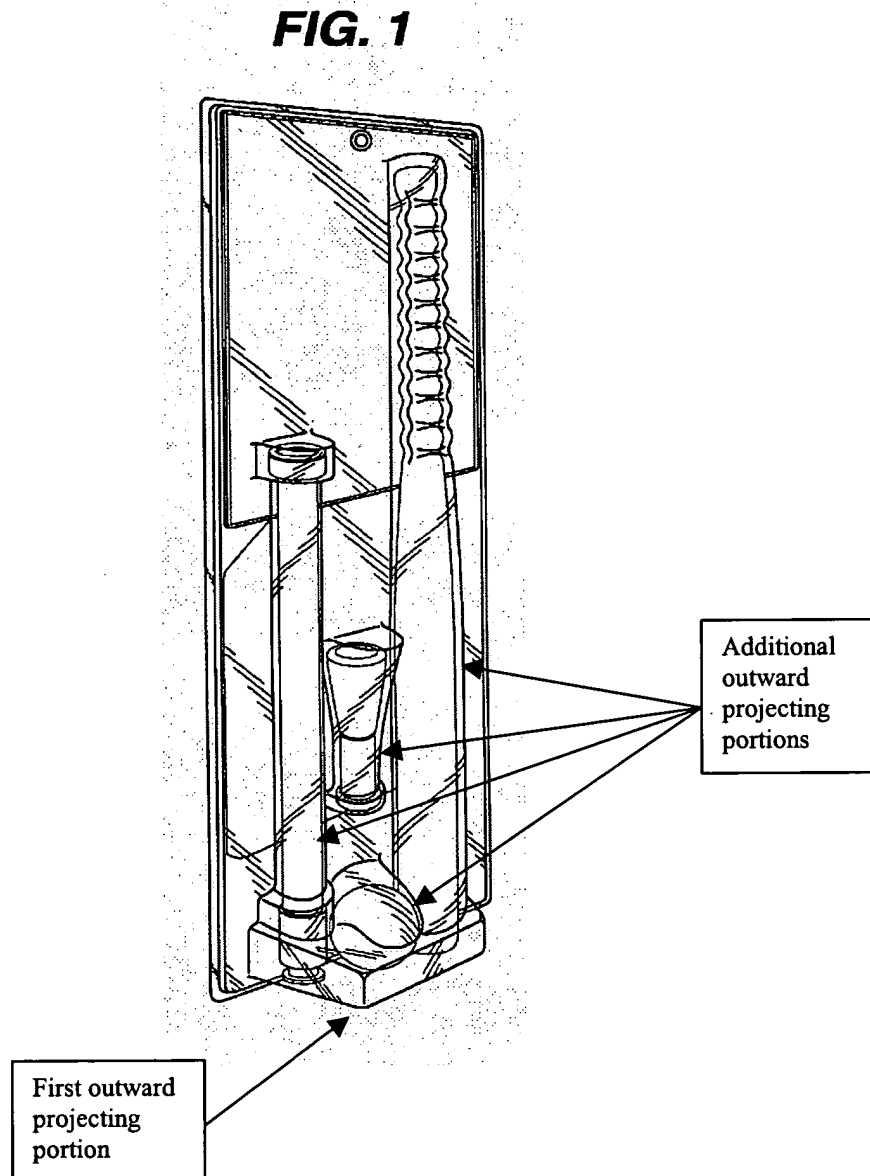
As to claims 9 and 10, one of said portions of non-uniform depth is a wall of one of said at least one additional outward projecting portion

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As to claims 11 and 12, the first portion is substantially rectangular when view from the front side in as much as is claimed.

7. Claims 1-4, 7-12, 15 and 16 are rejected under 35 U.S.C. 102(e) as being anticipated by Udwin et al (Patent no. D467,494). As to claims 1 and 2 a package for containing and displaying at is disclosed comprising a back panel, and a front panel attached to said back panel, wherein said front panel comprises a blister pack formed of plastic and including a first outward projecting portion in a bottom portion of said blister pack and at least one additional outward projecting portion having a depth and shape conforming to at least a portion of said at least one article, wherein at least a portion said first outward projecting portion extends widthwise at least a substantial portion between a first side of said blister pack and a second side of said blister pack, and has a depth outward sufficient to allow said package to stand substantially upright. As shown by the figure below the depth of said at least a portion of said first outward projecting portion is equal to or greater than an outermost projecting portion of the depth of said at least one additional outward projecting portion





As to claims 3 and 4, a package is shown above according to claims 1 and 2 wherein said at least one additional outward projecting portion is continuous with said first outward projecting portion.



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As to claims 7 and 8, a package according to claims 1 and 2 is shown where the first outward projecting portion includes a front wall of uniform depth.

As to claims 9 and 10, one of said portions of non-uniform depth is a wall of one of said at least one additional outward projecting portion

As to claims 11 and 12, the first portion is substantially rectangular when view from the figure on the previous page in as much as is claimed.

As to claim 15 and 16, a package is shown in the figure on page 7 where said at least one additional outward projecting portions are present, on either side of the middle additional projection portion, wherein said two of said at least two additional outward projecting portions are of different depths from each other.

8. Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Glassman (Publication no. US 2001/0007308). As to claims 1 and 2 a package for containing and displaying at is disclosed comprising a back panel, and a front panel 12 attached to said back panel 14, wherein said front panel comprises a blister pack formed of plastic and including a first outward projecting portion (the bottom part of 12a in figure 1) in a bottom portion of said blister pack and at least one additional outward projecting portion having a depth and shape conforming to at least a portion (the top part of 12a in figure 1) of said at least one article, wherein at least a portion said first outward projecting portion extends widthwise at least a substantial portion between a first side of said blister pack and a second side of said blister pack, and has a depth outward sufficient to allow said package to stand substantially upright.

As to claims 3 and 4, a package is shown above according to claims 1 and 2 wherein said at least one additional outward projecting portion is continuous with said first outward projecting portion.

As to claims 5 and 6, two protrusions are shown in figures 1 and 5, #'s 38, 40, 76 and 78

As to claims 7 and 8, a package according to claims 1 and 2 is shown where the first outward projecting portion includes a front wall of non-uniform depth.

As to claims 9 and 10, one of said portions of non-uniform depth includes said at least one additional outward projecting portion

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Humphrey (Patent no. D447,408), Udwin et al (Patent no. D467,494) and Glassman (Publication no. US 2001/0007308) as applied to the above claims above, and further in view of Perkins (Patent no. 4,781,289). As to claims 13 and 14 Perkins teaches that it would have been obvious to one of ordinary skill in the art to construct the additional portion projection of a depth that is equal to the first outward projecting portion (22) as described in col. 3, lines 7-9, in order to keep the package from falling over.

It is also noted such a change would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). Also, it has been held that where the only difference between the prior art device and the claimed device was a recitation of relative dimensions, the claimed device was not patentably distinct from the prior art device, Gardner v. TED Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. Denied, 469 U.S. 830, 2325 USPQ 232 (1984), see M.P.E.P. 2144.04 (IV).

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***Response to Arguments***

12. Applicant's arguments, with respect to claims 13 and 14 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Perkins (Patent no. 4,781,289) and recognized ordinary skill as described above.

**This Action is Non-Final**

***REPLY BY APPLICANT OR PATENT OWNER TO THIS OFFICE ACTION***

13. "In order to be entitled to reconsideration or further examination, the applicant or patent owner must reply to every ground of objection and rejection in this Office action. The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. The applicant's or patent owner's reply must appear throughout to be a bona fide attempt to advance the application or the reexamination proceeding to final action. A general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. The reply must be reduced to writing (emphasis added)", see 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

Pointing out specific distinctions means clearly indicating in the written response what features/elements or distinctions have been added to the claim/claims, where support is found in the specification for such recitations and how these features are not shown, taught, obvious or inherent in the prior art.

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If no amendments are made to claims as applicant or patent owner believes the claims are patentable without further modification, the reply must distinctly and specifically point out the supposed errors in the examiner's action and must respond to every ground of objection and rejection in the prior Office Action in the same vain as given above, 37 CFR 1.111 (b) & (c), M.P.E.P. 714.02.

The examiner also points out, due to the change in practice as affecting final rejections, older decisions on questions of prematurity of final rejection or admission of subsequent amendments do not necessarily reflect present practice. "Under present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)" (emphasis mine), see MPEP 706.07(a).

### ***Conclusion***

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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A handwritten signature in black ink, appearing to read 'David T. Fidei', with a long horizontal line extending to the right.

David T. Fidei  
Primary Examiner  
Art Unit 3728

dtf  
March 31, 2006